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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/629,356

07/29/2003

Kenji Ishida

2552-000056

6234

27572

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08/21/2006

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EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/629,356

Applicant(s)

ISHIDA ET AL.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/6/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The Examiner notes that the Information Disclosure Statement submitted on June 6, 2006, lists a single document (JP-10-260281) to Shimatani. This documents' number (10-260281) appears to be a typographical error and was intended to be 10-260681 (also to Shimatani). If so, this document (10-260681) was acknowledged in a previous IDS (July 29, 2003) and was cited against the claims in the previous Office Action. If not, the Applicant is requested to supply a copy of 10-260281 for the Examiner to consider.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 4 and 6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 4 and 6 recite "a program for implementing a musical composition data editing method." A program, without being encoded on a computer-readable medium, has been held to be non-statutory subject matter (MPEP 2106).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani (JP 10-260681) in view of Mizuno (5,179,240). Regarding claims 1, 3, and 4, Shimatani discloses the use of determining if control codes have changed (paragraph [0019] – “discriminates” and “investigates” are equivalent to “determining”) and a re-writing device to re-write musical composition data so that the composition state is constant (paragraph [0011] – “no sense of incongruity” is equivalent to “constant”). Shimatani does not disclose the use of determining whether or not the imaging (“imaging” is synonymous with “pan” or “stereo positioning”) in the musical composition has changed. Mizuno discloses that panning (i.e., imaging) can be controlled by controlling the volume for each speaker (col. 6, lines 5 – 8). In other words, by controlling volume, imaging is controlled. It would have been obvious to one of ordinary skill in the art to combine the teachings of Shimatani and Mizuno to obtain a data editing device that determines whether image data has changed and, if so, rewrites the image data to make the data “constant.” The motivation for making this combination, as suggested by Shimatani, would be to “automatically alter the whole

playing data without a feeling of physical disorder" (i.e., abrupt changes in stereo imaging could be irritating and/or annoying and difficult for a novice to correct).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani in view of Cakewalk (Cakewalk Professional for Windows 2.0. User's Guide. 1992). The teachings of Shimatani have been discussed supra with respect to independent claim 1. Regarding claim 2, Shimatani does not teach the use of controlling, determining changes in, nor re-writing tempo data control. The Cakewalk User's manual discloses volume (pages 72 and 73 – in MIDI implementation "velocity" is synonymous with "volume") and tempo (pages 105 – 108) wherein the values may be changed and the device controlled in accordance with the changed value. It would have been obvious to one of ordinary skill in the art to combine the teachings of Shimatani and the Cakewalk User's Manual to obtain a device that maintains constant control codes on the basis of a detected changed value. The motivation for making this combination is taught by Shimatani, such a device would allow a user to avoid "a feeling of physical disorder" by making the music all of a similar tempo and/or volume (see Shimatani's Abstract), since it is well-known that abrupt changes in tempo and/or volume can be irritating.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 5 – 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimatani, et al. (JP Publication No. 10-260681). Regarding claims 5 and 6, Shimatani discloses a determining device to determine of control codes for controlling effects have been changed in the source data (see paragraphs [0004] and, if so, changing the control codes (paragraph [0026])). Regarding claim 7, Shimatani discloses the use of determining that control data is contained in the source file (discussed supra) and if that control data has changed to delete it (paragraph [0019] – “eliminate” is synonymous with “delete”). Regarding claim 10, as stated supra, Shimatani discloses the use of determining if control data changes (e.g., volume by user input), and if so, then re-writes the control data so that the entire composition has the same (i.e., constant) volume – see paragraphs [0026] through [0030]. Regarding claims 8 and 11, Shimatani detects changes in the source data and re-writes that data, the Examiner interprets this to mean “transmitting” the data to be changed.

### ***Allowable Subject Matter***

8. Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose the use of a music composition system wherein a control code deleting device for deleting control

codes (the claims distinguish between control codes, source musical composition data, and musical composition data) to generate musical composition data which is distributed to a performing apparatus wherein the musical tone generating device receives musical composition data, edits this received data, and parses motions of the device to map different types of motion onto different musical control codes.

### ***Response to Arguments***

9. Applicant's arguments filed June 6, 2006, have been fully considered but they are not persuasive. The Applicant argues that "Shimatani...unlike applicants' invention...simply searches and replaces for a predetermined parameter and changes it, if found. Thus Shimatani, in effect, performs a search and replace function." The Examiner concurs in part. Yes, Shimatani performs a "search and replace function" (i.e., re-writing), but also determines which control code (either volume or effects) to replace. Shimatani "discriminates the kind of an even [*sic*] of the alteration that the user indicates." The Examiner maintains that this "discrimination" is synonymous with Applicants' "determining."

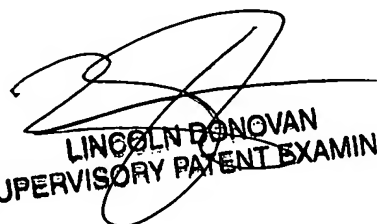
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dsw

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER